

# POLYSTYRENE AND DISPOSABLE PLASTIC REDUCTION BYLAW

## Section I. Findings and Purpose

Disposable food service ware made of polystyrene, items made of unencapsulated polystyrene foam, and disposable plastic utensils have a negative impact on our environment and are a potential health hazard. A component of polystyrene—styrene—has been classified as a “probable carcinogen.”<sup>1</sup> Polystyrene, and especially polystyrene foam, enters the environment and harms wildlife who mistake it for food, ingest it, and die. The presence of polystyrene and disposable plastic utensils persists for hundreds of years, especially in the marine environment. These items break into smaller pieces and/or microplastics, absorb and concentrate environmental toxins, and can enter the food chain when consumed by fish, shellfish, and other organisms—thus potentially contaminating the human food supply. Polystyrene and many disposable plastic utensils are not biodegradable, compostable or able to be recycled in the Town of Acton. Less toxic, more durable, reusable, recyclable, biodegradable, and/or compostable alternatives are readily available for many food service and other applications, and are affordable and effective ways to reduce negative health and environmental impacts from the use of polystyrene and disposable plastic items. With the goal of protecting our citizens’ health and the unique natural beauty and resources of the Town of Acton, and because inexpensive, safe alternatives to polystyrene and disposable plastic utensils are easily obtained, the Town will prohibit the use and distribution in the Town of Acton of disposable food service ware made from polystyrene, items made from unencapsulated foam polystyrene, and disposable plastic utensils.

## Section II. Definitions

The following words shall have the following meanings for purpose of this Bylaw:

**“Polystyrene”** shall mean a synthetic polymer produced by polymerization of styrene monomer. Polystyrene includes both “Foam Polystyrene” and “Solid Polystyrene” as defined in this Bylaw. The International Resin Identification Code assigned to polystyrene materials is “6”. Polystyrene items may be identified by a “6” or “PS,” either alone or in combination with other letters. The regulations and prohibitions relating to polystyrene in this Bylaw are intended to apply regardless of the presence or absence of an International Resin Identification Code or other identifying marks on the item.

**“Foam Polystyrene”** (sometimes called “Styrofoam,” a Dow Chemical Co. trademark form of EPS insulation) shall mean polystyrene in the form of a foam or expanded material, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

**“Solid Polystyrene”** shall mean polystyrene, including clear (oriented) polystyrene, produced in a rigid form with minimal incorporation of air or other gas. Solid polystyrene is also referred to as ‘rigid polystyrene.’

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<sup>1</sup> Classified by the World Health Organization’s International Agency for Research on Cancer (IARC) as Group 2A “probable carcinogen”

**“Disposable Food Service Ware”** shall mean

- a) products for heating, storing, packaging, serving, consuming, or transporting prepared or ready-to-consume food or beverages including, but not limited to, bowls, plates, trays, cartons, cups, lids, hinged or lidded containers, knives, forks and spoons made from polystyrene that are primarily for single-use and are not meant to be adequately and repeatedly cleaned and sanitized for reuse. This includes any containers used by food establishments to heat, cook, or store food or beverages prior to serving, regardless of whether such containers are used to serve such food or beverages.
- b) disposable plastic utensils.

Disposable Food Service Ware also includes any such implements sold by Retail Establishments to consumers for personal use.

**“Disposable plastic utensil”** shall mean a drinking straw, stirrer, splash stick or chopstick that is made predominantly from synthetic polymers and is not a reusable utensil. A disposable plastic utensil shall also include items made in whole or in part from synthetic polymers that are otherwise classified as ‘compostable’, ‘biodegradable’, ‘oxodegradable’, or ‘marine degradable’.

**“Reusable utensil”** shall mean a spoon, fork, knife, chopsticks, or drinking straw that is manufactured from durable materials and is designed to be adequately and repeatedly cleaned and sanitized for reuse.

**“Prepared Food”** shall mean food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared (collectively “prepared”) for individual customers or consumers. Prepared Food does not include raw eggs or raw, butchered meats, fish, seafood, and/or poultry.

**“Food Establishment”** shall mean any operation that serves, vends or otherwise provides food or other products to third-parties for consumption and/or use on or off the premises, whether or not a fee is charged, but not including the service of food within a home or other private setting. Any facility requiring a food permit in accordance with the Massachusetts State Food Code, 105 CMR 590.000, et seq. and/or regulations of the Acton Board of Health shall be considered “food establishment” for purposes of this Bylaw.

**“Retail Establishment”** shall mean a store or premises engaged in the retail business of selling or providing merchandise, goods, groceries, prepared take-out food and beverages for consumption off-premises or the serving of an item, directly to customers at such store or premises, including, but not limited to, grocery stores, department stores, clothing stores, pharmacies, convenience stores, restaurants, coffee shops and seasonal and temporary businesses, including farmers markets and public markets; provided, however, that a “retail establishment” shall also include a food truck or other motor vehicle, mobile canteen, trailer, market pushcart or moveable roadside stand used by a person from which to engage in such business directly with customers and business establishments without a storefront, including, but not limited to, a business delivering prepared foods or other food items, web-based or catalog business or delivery services used by a retail establishment; provided further, that a “retail establishment” shall include a non-profit organization, charity or religious institution that has a retail establishment and holds itself out to the public as engaging in retail activities that are characteristic of similar type commercial retail businesses, whether or not for profit when engaging in such activity.

**“Packing Material”** shall mean material used to hold, cushion, or protect items packed in a container for shipping transport or storage.

**“Health Agent”** shall mean the Health Agent for the Acton Board of Health or his/her designee.

### **Section III. Regulated Conduct**

1. After January 1, 2023 Food Establishments in the Town of Acton may not
  - a. use, sell, offer for sale, or otherwise distribute either disposable food service ware made from foam polystyrene or solid polystyrene or disposable plastic utensils.
  - b. provide a disposable non-plastic utensil to a customer, except upon that customer’s specific request for such items or if the item is selected by a customer from a self-service dispenser.
2. After January 1, 2023, Retail Establishments in the Town of Acton may not sell, offer for sale, or otherwise distribute:
  - a. disposable food service ware made from foam polystyrene or solid polystyrene.
  - b. disposable plastic utensils unless equivalent non- plastic or reusable utensils are available for sale and are clearly labeled such that any customer can easily distinguish among the single-use plastic, disposable non-plastic, and reusable items.
  - c. meat trays, fish trays, seafood trays, vegetable trays, or egg cartons made in whole or in any part with foam polystyrene or solid polystyrene.
  - d. packing materials, including packing peanuts and shipping boxes made in whole or in any part with foam polystyrene that is not wholly encapsulated within a more durable material.
  - e. coolers, ice chests, or similar containers; pool or beach toys; and dock floats, mooring buoys, or anchor or navigation markers which are made in whole or in any part with foam polystyrene that is not wholly encapsulated within a more durable material.
3. For purposes of Section 3(2)(d), “distributing packing material” does not include:
  - a. Reusing packing materials for shipping, transport, or storage within the same business or distribution system as long as those packing materials are not then sent to a customer or end user.
  - b. Receiving shipments within the Town of Acton that include polystyrene foam used as a packing material, provided that the goods were not packaged or repackaged within Acton.

### **Section IV. Exemption**

1. Nothing in this Bylaw shall prohibit individuals from using disposable food service ware made of polystyrene that has been purchased outside the Town of Acton for personal use.
2. Nothing in this Bylaw shall prohibit individuals from bringing and using their own personal utensils of any type for personal use in a food establishment.
3. Prepared food packaged outside the Town of Acton is exempt from the provisions of this Bylaw, provided that it is sold or otherwise provided to the consumer in the same disposable food service ware in which it was originally packaged, and that the prepared food has not been altered or repackaged
4. The Board of Health or health agent may exempt a food establishment or retail establishment from any provision of this Bylaw for a period of up to six months upon written application by the owner or operator of that establishment. No exemption will be granted unless the Board of Health or health agent finds that (1) strict enforcement of the provision for which the exemption

is sought would cause undue hardship; or (2) the food establishment or retail establishment requires additional time in order to draw down an existing inventory of a specific item regulated by this Bylaw. For purposes of this Bylaw, “undue hardship” shall mean a situation unique to a food establishment or retail establishment in which there are no reasonable alternatives to the use of materials prohibited by this Bylaw, and that compliance with this Bylaw would create significant economic hardship for the Establishment.

## **Section V. Enforcement**

The Health Agent for the Acton Board of Health or his/her designee shall have authority to enforce this Act and any regulations promulgated thereunder. This Act may be enforced through any lawful means in law or in equity, including but not limited to, noncriminal disposition pursuant to G.L. c. 40 § 21D, and Articles C3. and E45. of the Town of Acton General Bylaws.

## **Section VI. Regulations**

The Board of Health may adopt and amend rules and regulations to effectuate the purposes of this Bylaw.

## **Section VII. Interaction with Other Laws**

In the case of a conflict between the requirements of this Bylaw and any other federal, state or local law concerning the materials regulated herein, the more stringent requirements shall apply.

## **Section VIII. Severability**

If any provision of this Bylaw is declared invalid or unenforceable the other provisions shall not be affected thereby.